

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of License of:

MICHELLE GAY LONGCOR

Petitioner.

OAH No. 2012101096

DECISION

This matter was heard on November 8, 2012, before a quorum of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, State of California, in Sacramento, California. Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, presided.

Jeffrey M. Phillips, Deputy Attorney General, appeared pursuant to Business and Professions Code section 2878.7, subdivision (b).

Petitioner Michelle Gay Longcor represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 8, 2012.

SUMMARY

Petitioner seeks reinstatement of her psychiatric technician license, which was revoked effective July 7, 2002. As discussed below, she did not establish sufficient rehabilitation to justify reinstating her license. Nor is her education sufficiently current such that she is capable of performing the duties of a psychiatric technician in a manner consistent with public health, safety, and welfare. Therefore, her Petition for Reinstatement of License is denied.

FACTUAL FINDINGS

1. On June 10, 1994, the Board issued petitioner Psychiatric Technician License No. PT 29082 (license). The license expired March 31, 2002, and has not been renewed.

2. Effective July 7, 2002, the Board revoked petitioner's license on the grounds she was convicted of a crime that is substantially related to the qualifications, functions, or duties of a psychiatric technician and engaged in unprofessional misconduct. Specifically, she was convicted on August 30, 1999, of possession of a controlled substance with the intent to sell. The factual basis for her conviction was that she possessed methadone with the intent to sell on April 9, 1999.

3. On July 24, 2012, the Board received petitioner's Petition for Reinstatement of License (Petition). She provided the following explanation for why her license was revoked:

MY LICENSE WAS REVOKED DUE TO MY POOR JUDGEMENT, KNOWINGLY TAKING A BOTTLE OF LIQUID METHADONE. THIS OCCURED [sic] AT A PLACE OF PRIOR EMPLOYMENT. BECAUSE OF THE NATURE OF CRIME (DRUG RELATED) MY LICENSE WAS REVOKED.

4. Petitioner disclosed on her Petition the following additional convictions that occurred after her license was revoked:

- a. January 13, 2003, forgery/possession of an account access card and receiving stolen property;
- b. March 18, 2004, petty theft with a prior theft-related conviction; and
- c. March 2, 2005, petty theft with two prior theft-related convictions.

5. In response to the question on the Petition about whether she had taken any continuing education courses related to nursing or other healthcare issues, petitioner wrote the following:

UP TO THIS POINT I HAD NOT COMPLETED ANY CEU'S. I WAS NOT AWARE OF POLICIES RE: CEU'S IF LICENSE WAS REVOKED. BUT, IF REINSTATED I DEFINITELY HAVE IMMEDIATE PLANS TO GAIN MORE CEU'S.

6. Petitioner was the sole witness at hearing. She was unable to articulate any plausible explanation for possessing methadone with the intent to sell. And when she was asked why she engaged in her subsequent criminal conduct, she said little other than her

crimes were all the result of "poor choices." Petitioner's criminal convictions were dismissed pursuant to Penal Code section 1203.4.

7. Petitioner previous sent the Board two character reference letters. Neither author explained the extent of his knowledge, if any, of petitioner's criminal history. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.2d 933, 940 [a character reference is not probative of rehabilitation if the author is not aware of all facts and circumstances surrounding the act for which rehabilitation is important].) Therefore, neither letter was given much weight.

8. When considering a petition for reinstatement, the issue is whether the petitioner has been rehabilitated since her license was revoked. (See, *In re Andreani* (1939) 14 Cal.2d 736, 749 [existence of rehabilitation difficult to establish affirmatively, "but its nonexistence may be 'proved' by a single act."]) The Board has adopted criteria for evaluating any such rehabilitation. California Code of Regulations, title 16, section 2579, provides as follows:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 4524 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of

sentence and/or court-ordered probation.

(10) Time passed since the act(s) or offense(s) occurred.

(11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory agencies.

(13) Other rehabilitation evidence.

9. Under all the facts and circumstances herein, it would be contrary to public health, safety, and welfare to reinstate petitioner's psychiatric technician license at this time. She did not produce sufficient credible evidence of her rehabilitation since her license was revoked more than 10 years ago. Additionally, she has not taken any continuing education courses during that time. Therefore, petitioner did not establish she can be reinstated as a psychiatric technician without risk of harm to the public, and her Petition for Reinstatement of License must be denied.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4524 provides the following about a petition for reinstatement of license:

(a) A person whose license has been revoked, suspended, surrendered, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the disciplinary order or if any portion of the order is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for the reinstatement of a license that was revoked or surrendered, except that the board may, in its sole discretion, specify in its order a lesser period of time, which shall be no less than one year, to petition for reinstatement.

(2) At least two years for the early termination of a probation period of three years or more.

(3) At least one year for the early termination of a probation period of less than three years.

(4) At least one year for the modification of a condition of probation, or for the reinstatement of a license revoked for mental or physical illness.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or the administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) Except in those cases where the petitioner has been disciplined for a violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter the provisions of Sections 822 and 823.

2. For the reasons discussed in Factual Finding 9, petitioner failed to establish by clear and convincing evidence the existence of good cause to reinstate her psychiatric

technician license. Therefore, her Petition for Reinstatement of License is denied.

ORDER

Petitioner Michelle Gay Longcor's Petition for Reinstatement of License is DENIED.

This Decision shall become effective on **FEB 20 2013**

IT IS SO ORDERED **FEB 05 2013**



TODD D'BRAUNSTEIN, P.T.
President
Board of Vocational Nursing &
Psychiatric Technicians